IN THE

Supreme Court of the United States

OCTOBER TERM, 1977.

No. 77-965

ABDALLAH W. TAMARI, LUDWIG W. TAMARI AND FARAH W. TAMARI, CO-PARTNERS DOING BUSINESS AS WAHBE TAMARI & SONS CO.,

Petitioners,

vs.

BACHE & CO. (LEBANON) S.A.L., A LEBANESE CORPORATION, BACHE & CO., INCORPORATED, A DELAWARE CORPORATION, AND THE BOARD OF TRADE OF THE CITY OF CHICAGO, AN ILLINOIS CORPORATION,

Respondents.

BRIEF AND APPENDIX FOR RESPONDENT, BACHE HALSEY STUART SHIELDS, INCORPORATED (FORMERLY BACHE & CO., INCORPORATED), IN OPPOSITION TO PETITION FOR CERTIORARI.

N. A. GIAMBALVO,
JAMES W. COLLINS,
LAWRENCE M. GAVIN,
Attorneys for Respondent.

BOODELL, SEARS, SUGRUE,
GIAMBALVO & CROWLEY,
One IBM Plaza—Suite 2650,
Chicago, Illinois 60611,
(312) 222-9400,
Of Counsel.

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BRIEF FOR RESPONDENT, BACHE HALSEY STUART SHIELDS, INCORPORATED (FORMERLY BACHE & CO., INCORPORATED), IN OPPOSITION TO PETITION FOR CERTIORARI.

Respondent prays that the petition for writ of certiorari be denied.

QUESTIONS PRESENTED.

The case does not present any questions worthy of review by this Court.

The only issues presented by this case are:

1. Whether the petition should be denied by reason of petitioners' failure to fully and accurately state the material facts required by Supreme Court Rules 23-1(e) and 23-4.

2. Whether the petition should be denied in the interest of orderly judicial procedure and because the issues in the case are cloudy and confused.

3. Whether the petition should be denied since the decision of the Court of Appeals is correct and in conformity with the decisions of this Court and of other courts.

4. Whether the petition should be denied because the decision below affects only the private parties to this litigation, and does not involve any important principle of law or matter of public policy.

ADDITIONAL STATEMENT OF THE CASE.

1. Introduction.

The statement of the case in the petition does not adequately set forth the facts material to the consideration of the questions presented, and substantially differs from the facts as they appear in the record. To correct these inaccuracies and omissions, the following additional statement of the case was deemed necessary.

The petition is predicated upon the alleged unenforceability of the arbitration provisions of the so-called customer agreements which were entered into prior to the date the dispute between the parties arose. The record shows that the petitioners voluntarily entered into several agreements to arbitrate their dispute *after* the dispute arose, all of which the petitioners have failed to bring to the attention of this Court.

The dispute between the petitioners and the respondent, Bache Halsey Stuart Shields, Incorporated (formerly Bache & Co., Incorporated) arose out of two commodity accounts maintained

by the petitioners with respondent's branch office in Beirut, Lebanon. Petitioners opened the first account on May 20, 1972, by signing a customer agreement (Pet. App. p. A35) containing, among numerous other provisions, an express provision to arbitrate all disputes arising out of the account. On September 22, 1972, petitioners opened a second account and at that time signed a second customer agreement containing similar provisions.

For over a full year following the opening of their first account, petitioners dealt with respondent without protest or objection. They engaged in many hundreds of very substantial trades in a large variety of commodity futures involving in excess of $2,000,000. The dispute arose in the fall of 1972.

2. The Several Agreements to Arbitrate Entered Into After the Dispute Arose.

It is clear that the petition is predicated upon the incorrect notion that the arbitration of the basic dispute resulted solely from the arbitration provisions of the customer agreements. That is simply not the fact, and this misconception should be immediately corrected. As the record reveals, the arbitration resulted from a number of separate voluntary agreements of the petitioners made months and years after the dispute arose.

The petitioners' charges of alleged fraud are directed solely at the customer agreements. Petitioners' main brief in the Court of Appeals set forth their position:

> "Further, the complaint alleges . . . that the customer agreements between Tamaris and Bache Delaware, which included the arbitration clause, had been obtained by fraud and coercion."

Petitioners have never questioned or challenged the arbitration agreements entered into *after* the dispute arose.

The facts submitted to the District Court, by affidavit and otherwise, firmly established that petitioners voluntarily entered into several arbitration agreements *after* the dispute arose.

First: Petitioners entered into telegraphic communications in January, 1974 in which they stated ". . . this is to inform you that we accept arbitration. . ." (Pet. App. pp. A38-40). This new arbitration agreement provided for different and additional items, including: (i) a different forum, viz., the Chicago Board of Trade (the customer agreements stipulated the arbitration forum as being either the New York Stock Exchange or the American Arbitration Association), and (ii) the inclusion of petitioners' counterclaim of $2,115,000.00. At this time, petitioners made no effort to assert the alleged fraud, or to disaffirm the customer agreements, or to refuse to arbitrate, or even to protest against arbitration. Petitioners did none of these things. Rather, they freely and voluntarily consented to a new arbitration agreement.

Second: Several months *after* the dispute arose, petitioners, with full knowledge of the alleged fraud, and with the advice of their attorneys, voluntarily entered into another arbitration agreement, viz., the Arbitration Submission Agreement of April 27, 1974 (Pet. App. A41). That agreement reads, in part:

> "CHICAGO BOARD OF TRADE
>
> ARBITRATION FORM
>
> WHEREAS, Differences and controversies are now existing and pending between Bache & Co. Incorporated, and Wahbe Tamari & Sons and Wahbe Tamari & Sons Co. in relation to business transactions.
>
> Now we, the undersigned Wahbe Tamari & Sons and Wahbe Tamari & Sons Co. and Bache & Co. Incorporated aforesaid, desiring to avoid proceedings in the courts, do hereby mutually agree to submit the said differences and controversies for decision, in accordance with the rules of the Board of Trade of the City of Chicago to a quorum of the present 'Committee of Arbitration' elected by said Board of Trade, or to substitutes for members of said Committee, as the case may be; and it is hereby understood and agreed by the parties hereto that any award or

> finding of said arbitration shall be subject to appeal to the regular elected 'Committee of Appeals' of said Board of Trade, as provided for appeals from the decisions of the 'Committee of Arbitration.'" (Pet. App. pp. A41-42.)

Third: Petitioners again voluntarily agreed to arbitrate their dispute, and again with the advice of their attorneys, many months *after* the dispute arose, by filing an *answer* to respondent's arbitration complaint to recover from petitioners a debit balance of $376,366.96. By their answer petitioners joined issue and sought a resolution of their dispute by arbitration (Resp. App. p. A28).

Fourth: Several months after the dispute arose, and again with the advice of their attorneys, petitioners again voluntarily agreed to arbitrate their dispute by filing their *counterclaim* against respondent seeking by arbitration to recover in excess of $2,500,000 (they sought to recover $2,115,000 together with an adjudication of no liability for the asserted debit balance) (Resp. App. p. A31).

Fifth: Petitioners also voluntarily agreed to arbitration by their participation in the arbitration proceedings. Over a long period of months petitioners and their attorneys extensively and substantially participated in the arbitration proceedings, including attendance at hearings, consideration of written interrogatories, production of documents, subpoenas duces tecum, oral depositions, cross-examination of respondent's witnesses and the introduction of oral testimony and documentary evidence.

Affidavits establishing all of these facts were submitted by respondent to the District Court. Petitioners did not at any time during the course of this litigation contest the making or existence of any of these several arbitration agreements. They submitted no counter-affidavits. Their pleadings, in fact, admitted these *post* dispute arbitration agreements. No evidentiary hearing was requested. On December 10, 1975 (almost two years after the arbitration proceedings had commenced) petitioners filed the *first* of their *four* actions in the District Court. Their

long complaint (37 paragraphs covering 23 pages) contained not one word of any alleged fraud or coercion concerning the arbitration agreements. Obviously, the after-thought of fraud and coercion had not yet occurred to petitioners. It did not occur to them until they filed their *second* action on January 6, 1976, *over two years after the dispute arose* and almost *two years after the arbitration proceedings were commenced* (Respondent's arbitration complaint was filed on February 8, 1974).

3. History of Arbitration.

On May 20, 1972, petitioners began trading in commodity futures on the Chicago Board of Trade ("CBOT") in two commodity accounts which they maintained with respondent. In the fall of 1973 a dispute arose in these accounts and the parties agreed to arbitrate the dispute before the CBOT.

On February 8, 1974, the arbitration proceedings were commenced before the CBOT when respondent filed its complaint in arbitration against petitioners seeking recovery of the debit balances remaining in their accounts. On September 5, 1974, petitioners filed an answer to the complaint and, also, a counterclaim against respondent.

On October 17, 1975, arbitration hearings commenced and continued to May 17, 1976.

On June 21, 1976, the arbitrators rendered their award (Resp. App. p. A25).

On June 28, 1976, the petitioners appealed the award to the Committee of Appeals of CBOT. On January 25, 1977, the Committee on Appeals affirmed the arbitrators' award (Resp. App. p. A28).

4. History of Litigation.

During the pendency of the arbitration proceedings, the Tamaris filed *three* separate actions in the United States District Court for the Northern District of Illinois, Eastern Division, all involving the subject of the arbitration proceedings.

Following the issuance of the arbitration award, the petitioners filed a *fourth* action in the same court seeking to vacate the award. Petitioners' petition is taken from the order of the Court of Appeals which affirmed the dismissal of the second action.

First Action.

On December 10, 1975, the petitioners filed the *first* of these actions against respondent, entitled *Tamari, et al.* v. *Bache, et al.*, Case No. 75 C 4189, in which they alleged the *same facts* as had been alleged in their counterclaim being arbitrated before the CBOT (Pet. App. Ex. K, p. A60). In addition to money damages, the petitioners prayed for an injunction enjoining respondent from "having the cause adjudicated in any other forum".

On April 21, 1976, the District Court entered its preliminary opinion. On May 19, 1976, the District Court entered its order dismissing the action ordering the petitioners to arbitrate (Pet. App. p. A103).

On June 16, 1976, the petitioners filed a notice of appeal from that order to the U. S. Court of Appeals for the Seventh Circuit. That appeal was dismissed by order of that court entered September 23, 1976, on petitioners' own motion to remand. That order of dismissal and for arbitration is still in force. That action is still pending against Bache & Co. (Lebanon) S.A.L., a foreign subsidiary of respondent.

Second Action.

On January 6, 1976, and while the *first* action was pending, the petitioners filed their *second* action against respondent entitled *Tamari, et al.* v. *Bache, et al.*, Case No. 76 C 21 (Pet. App. Ex. L, p. A76). The CBOT was also named as a defendant.

The complaint alleges that a dispute arose between petitioners and respondent sometime in 1973 concerning petitioners' commodity accounts, that the dispute was submitted to arbitration

before the Arbitration Committee of the CBOT on February 4, 1976, and that on September 17, 1974 petitioners filed their answer to respondent's arbitration complaint and also filed a counterclaim seeking over $2 million from respondent in the arbitration proceedings. Petitioners allege that the arbitration proceedings are invalid because (1) they were induced by fraud to enter into the customer agreements which contained provisions requiring arbitration, (2) amendments to the Commodity Exchange Act which became effective in April, 1975, deprived the Arbitration Committee of the CBOT of jurisdiction over the dispute, and (3) the arbitration proceedings were being conducted unfairly.

In this second action, the petitioners sought (as does their complaint in their *third* action) a declaratory judgment (1) barring the arbitration by the CBOT, (2) decreeing that a "fair and impartial determination" by the CBOT could not be had, (3) decreeing the petitioners' participation in the arbitration before the CBOT had been obtained by "fraud, coercion and duress", (4) decreeing that the arbitration was in violation of the Rules of the CBOT, and (5) decreeing that petitioners' interest would be "prejudiced" if they were required to proceed with the arbitration.

On April 21, 1976, the District Court entered its preliminary opinion expressly stating that the cause "should be dismissed" (Pet. App. p. A29). Without anything further being heard from the Tamaris, the District Court entered its order dismissing the action on May 19, 1976. On June 16, 1976, the petitioners filed a notice of appeal from that order to the U. S. Court of Appeals for the Seventh Circuit. On October 19, 1977, that court affirmed the order of dismissal, and ordered the petitioners to pay respondent's costs. On November 28, 1977, that court denied petitioners' petition for rehearing. The decision in this case is the subject of this petition.

Third Action.

On June 6, 1976, following the dismissal of their *second* action, the petitioners filed a *third* action entitled *Tamari, et al.* v. *Conrad, et al.*, Case No. 76 C 2071, involving the same subject matter as the *second* action. In this *third* action, the petitioners also named as defendants the individual arbitrators. Respondent moved to dismiss the action.

On November 15, 1976, the District Court dismissed the action. On December 14, 1976, petitioners filed a notice of appeal of the November 15, 1976, order to the U. S. Court of Appeals for the Seventh Circuit. On April 12, 1977, the Court of Appeals affirmed the order of the District Court, and again ordered the petitioners to pay respondent's costs. *Tamari* v. *Conrad*, 552 F. 2d 778 (7th Cir. 1977).

Fourth Action.

On January 27, 1977, the petitioners filed a *fourth* action against respondent, entitled *Tamari, et al.* v. *Bache, et al.*, Case No. 77 C 301 (Resp. App. p. A1). The complaint alleges that the arbitrators were arbitrary, prejudicial, biased, unfair and oppressive (as did the complaint in the *second* and *third* actions). The *fourth* complaint incorporates almost verbatim the allegations made in the *third* action regarding the alleged lack of authority of the arbitrators to preside over the arbitration proceeding. The complaint asks the District Court, pursuant to Section 10 of the Federal Arbitration Act, to vacate the award which was entered against the petitioners by the arbitrators and which was affirmed by the CBOT Appeals Committee. While this *fourth* action is still pending, the District Court has ordered all proceedings stayed pending the final resolution of this appeal.

REASONS FOR DENYING THE WRIT.

I.

Petitioners' Failure to State Essential Facts Required by Supreme Court Rules 23-1(3) and 23-4.

The petition should be denied by reason of (a) the failure of petitioners to state the essential facts material to the consideration of the questions presented, all as required by Rules 23-1(e) and 23-4, and (b) petitioners' misstating the grounds upon which the Court of Appeals affirmed the decision of the District Court.

Critical to the consideration of the questions presented for consideration by this Court were (1) the existence of several agreements to arbitrate voluntarily entered into by the petitioners *after* the dispute arose, and (2) the confused and piecemeal state of this litigation, including the pendency of the *first* and *fourth* actions in the District Court involving the same subject matter, all as set out in respondent's additional statement of the case.

Also critical is the petitioners' insistence on misstating and misinterpreting the grounds upon which the Court of Appeals affirmed the decision of the District Court (See *infra* pp. 16-17).

Having failed to fully and accurately state these essential facts, the petition is not in compliance with Rules 23-1(e) and 23-4. The petition should, therefore, be denied. *Erie Railroad Company* v. *Martin Kirkendale,* 266 U. S. 185, 186 (1924).

II.

The Issues in the Case Are Cloudy, Confused and Disorderly.

The petition should be denied in the interest of orderly judicial procedure. The issues in the case are, at best, cloudy and confused.

The Court of Appeals especially notes this in its opinion when it observed:

> ". . . the question is not without some difficulty as the issues are clouded." (Pet. App. p. A14)

Petitioners' penchant for filing numerous actions on the same subject matter has resulted in piecemeal litigation which, in the words of the Court of Appeals, is:

> "fractured and in some disarray" (Pet. App. p. A14),

and that this case:

> "is not a good situation for the expeditious and efficient resolution of the underlying controversy." (Pet. App. p. A14)

The decision of the Court of Appeals moved the case in the direction of eventual resolution. The denial of the petition here will achieve the same desirable result. Such denial would seem to be dictated by the concern for orderly judicial procedure. On the other hand, the granting of a review would (unfortunately) serve only to foster more "piecemeal" litigation, a matter which the Court of Appeals expressly pointed out (Pet. App. A, p. A16). *Maryland* v. *Baltimore Radio Show,* 338 U. S. 912, 918 (1949); *Erie Railroad Company* v. *Martin Kirkendale,* 266 U. S. 185, 186 (1924).

III.

Petitioners' Argument That the Commodity Exchange Act Renders the Arbitration Agreements Unenforceable Is Not Supported by Allegations of the Complaint and, Further, Is Without Merit.

A. Petitioners' Argument Is Not Supported by Allegations of the Complaint.

The primary reason petitioners advance for granting a writ of certiorari is that their customer agreements with respondent are adhesion contracts and that the arbitration clauses contained

in the customer agreements are therefore unenforceable under the provisions of the Commodity Exchange Act, 7 U. S. C. § 1 *et seq.*

The complaint, however, does not allege even in conclusory terms that the customer agreements were adhesion contracts, that petitioners were forced to accept the arbitration provisions contained in the customer agreements, or that the arbitration provisions themselves are invalid by virtue of provisions of the Commodity Exchange Act. The Court of Appeals noted that petitioners' complaint was deficient in this respect but nonetheless rejected their argument that the arbitration provisions contained in the customer agreements were unenforceable under the Commodity Exchange Act (Pet. App. p. A9).

As the allegations of the complaint do not support petitioners' theory to invalidate the arbitration provisions, the theory may not be urged here. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U. S. 1, 37 (1976); *Weade* v. *Dickmann, Wright & Pugh*, 337 U. S. 801, 808 (1948).

B. Petitioners' Argument Is Without Merit.

Section 2 of the Federal Arbitration Act, 9 U. S. C. § 2, provides in part that an arbitration agreement:

> ". . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract . . ."

This Court has construed these words to mean exactly what they say. Arbitration agreements are valid and are to be enforced. *United Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564 (1960); *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967); *Scherk* v. *Alberto-Culver Company*, 417 U. S. 506 (1974).

This Court has also stressed that a court's jurisdiction in reviewing a charge that an arbitration agreement is invalid because of fraud in the inducement is limited to those cases

where the charge is fraud in the inducement of the arbitration clause itself. Where no claim is made that fraud was directed to the arbitration clause itself, an arbitration clause will be held to encompass arbitration of a claim that the contract generally was induced by fraud. *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967).

The Federal Arbitration Act and this Court's decisions thus clearly indicate that arbitration agreements are valid and are to be enforced. Petitioners, nonetheless, urge that the arbitration proceedings should be declared invalid. They argue in vague terms that the arbitration proceedings are the result of an adhesion contract and that therefore the proceedings are invalid as being inimical with the policy of the Commodity Exchange Act, placing heavy reliance on *Wilko* v. *Swan*, 346 U. S. 427 (1953).

Their argument is without merit for several reasons. Initially, while they argue they were induced by fraud to enter into the customer agreements generally, they do not claim fraud in the inducement of the specific arbitration provisions contained in those agreements. It is clear under *Prima Paint* that the charges of fraud which petitioners raise are for the arbitrators to decide.

Second, petitioners ignore the fact that they agreed to arbitrate their dispute *both before and after* the dispute arose (*supra* pp. 3 to 6). Their complaint in fact alleges that after the dispute arose they submitted the dispute to arbitration and filed a counterclaim against respondent in the arbitration proceedings (Pet. App. pp. A80-81, A88). Petitioners do not argue that these *post* dispute agreements are adhesion contracts or otherwise challenge the enforceability of these agreements. Their argument that the arbitration provisions contained in the customer agreements are unenforceable simply ignores the several *post* dispute agreements, any one of which renders their position untenable.

Third, the rationale of *Wilko* v. *Swan*, 346 U. S. 427 (1953), has no application to this case. *Wilko* held that an agreement

to arbitrate a future controversy arising under the Securities Act, 15 U. S. C. 77a *et seq.*, was unenforceable by virtue of the provisions of Section 14 of that Act. There is no statutory counterpart of Section 14 of the Securities Act in the Commodity Exchange Act, and the statutory basis for invalidating an arbitration contract which was present in *Wilko* is thus lacking here. In addition, *Wilko* dealt with an agreement to arbitrate *future* disputes arising under the securities laws. Here petitioners agreed to arbitrate both *before* and *after* the dispute arose.*

Finally, the agreement here has international dimensions. Petitioners are citizens of Lebanon. The transactions complained of were allegedly initiated in Lebanon (Pet. App. p. A77). Some of petitioners' trades were placed on the London Sugar Exchange and are thus not subject to United States law. The arbitration agreements should thus be enforced to preserve the orderliness and predictability essential to an international business transaction. *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506, 519 (1974).

It is thus clear that petitioners have not urged a valid basis to invalidate the arbitration proceedings. They agreed to arbitrate and they submitted their dispute to arbitration. Under the Federal Arbitration Act and under this Court's decisions, their agreements to arbitrate are binding and enforceable. The Court of Appeals was correct in holding that petitioners had not alleged or argued a theory upon which the arbitration proceedings could be declared invalid.

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* Other cases relied on by Tamaris are similarly inapplicable. *Weissbuch* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 558 F. 2d 831 (7th Cir. 1977), *Ayers* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 538 F. 2d 532 (3rd Cir.) *cert. denied* 429 U. S. 1010, and *Macchiavelli* v. *Shearson, Hammill & Co.*, 384 F. Supp. 21 (E. D. Cal. 1974) each relied on § 29(a) of the 1934 Act to render void *prospective* agreements which would have required arbitration.

IV.

The Constitutional Issue Raised by Petitioners Is Without Merit.

Petitioners' argument that the dismissal of their complaint deprived them of due process finds no support in the record.

Initially, that argument is based upon the petitioners' misconception as to the grounds for affirmance by the Court of Appeals. As is shown *infra* pp. 16 to 17, the affirmance by the Court of Appeals was based upon grounds which petitioners choose to ignore, none of which required a hearing.

Further, there were no issues before the District Court which required a hearing. Petitioners contend that a hearing was required to determine the validity of the arbitration agreements, presumably in light of their charges of fraud. Petitioners, however, charged fraud in the inducement of the customer agreements generally, rather than fraud in the inducement of the specific arbitration provisions. The Court of Appeals correctly held, citing *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967), that no hearing was required on that issue since it was clearly subject to arbitration. In addition, the record before the District Court established the existence of several agreements to arbitrate entered into by petitioners *after* the dispute arose, none of which were challenged by petitioners. As to these *post* dispute arbitration agreements, no issue whatever existed which would necessitate a hearing.

Even if the argument as to the need for a hearing had merit, the Court of Appeals pointed out that the District Court entered its preliminary opinion on April 21, 1976 expressly stating that the cause should be dismissed. The order of dismissal was not entered until May 19, 1976, "without anything further being heard from Tamari" (Pet. App. p. A13). Petitioners had every opportunity to request a hearing and to object to the dismissal of their complaint without one but did not do so. This point

not having been presented to the District Court as error, it cannot be urged here! *Usery* v. *Turner Elkhorn Mining Co.*, 428 U. S. 1, 37 (1976); *Weade* v. *Dickmann, Wright & Pugh*, 337 U. S. 801, 808 (1948).

V.

The Decision of the Court of Appeals Is Supported on Grounds Independent of Those Petitioners Claim as Error.

Petitioners seriously misstate the grounds upon which the Court of Appeals affirmed the dismissal of the declaratory judgment action by the District Court.

The Court of Appeals did not affirm solely on the basis of the existence of an agreement to arbitrate. Yet, all of petitioners' arguments for review by this Court are based upon their misconception that the Court of Appeals did so.

The decision of the Court of Appeals is plainly based upon a host of other grounds in the record. The Court of Appeals set out these additional grounds for affirming the dismissal: (i) the dismissal was one under Rule 12(b)(6), Federal Rules of Civil Procedure (the failure to state a claim upon which relief can be granted), and not on the basis of summary judgment (Pet. App. pp. A6 and 7); (ii) the dismissal was proper on the basis of what was apparent from the pleadings (Pet. App. p. A7); (iii) the dismissal was a proper exercise of the discretionary power of the District Court in a declaratory judgment action (Pet. App. pp. A7 and A14) especially since the action could not provide a comprehensive solution of the underlying dispute or any substantial portion of it (Pet. App. p. A15); (iv) the dismissal was proper because the complaint did not directly attack the arbitration provisions, but, rather, the whole contract between the parties, and that the issue was subject to arbitration (Pet. App. p. A13); and, (v) the dismissal was a proper exercise of the judicial discretion of the District Court arising out of the pendency of other actions involving the same subject matter (Pet App. p. A15).

The affirmance by the Court of Appeals of the dismissal by the District Court was proper under any one of these several grounds. Respondents do not attack or question any of these grounds. In fact, not the slightest mention of any of them is made in the petition.

It follows then that petitioners' argument that the decision of the Court of Appeals is contrary to the decisions of this Court and of other courts is wholly lacking in merit.

VI.

The Questions Presented Are Not of Any Gravity and General Importance.

The petition should be denied because the questions presented for review are not of any gravity and general importance. The issues raised in the petition will affect only the private parties involved in this case.

After the dispute between petitioners and respondent arose and after it was submitted for arbitration, the Commodity Futures Trading Commission Act (Public Law No. 93-463) amended the Commodity Exchange Act. The amendments, which became effective April 21, 1975, require contract markets to provide a fair and equitable arbitration procedure to settle customers' claims. 7 USC § 7(a)(11). The Commodity Futures Trading Commission has since promulgated regulations concerning the arbitration procedures which must be followed and the requirements which must be met to assure that a customer's agreement to arbitrate is voluntary. 41 F. R. 27520.

It is thus apparent that any ruling by this Court on the issues of this case will have limited precedential value. It would affect only those commodity claims which arose prior to the effective date of the amendments to the Commodity Exchange Act, namely those claims which arose before April 21, 1975.

Furthermore, the decision of the Court of Appeals is one substantially of petitioners' own making. They have unfairly

burdened both the Court of Appeals and the District Court with piecemeal suits and appeals, and they continue to persist in these tactics. Petitioners' misuse of the federal court system has resulted in a hodge-podge of lawsuits and appeals. Petitioners' unhappiness with the consequences of their conduct is no grounds for review by this Court.

CONCLUSION.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

N. A. GIAMBALVO,
JAMES W. COLLINS,
LAWRENCE M. GAVIN,
Attorneys for Respondent.

BOODELL, SEARS, SUGRUE,
GIAMBALVO & CROWLEY,
One IBM Plaza—Suite 2650,
Chicago, Illinois 60611,
(312) 222-9400,
Of Counsel.

APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

ABDALLAH W. TAMARI, LUDWIG W. TAMARI and FARAH W. TAMARI, co-partners doing business as WAHBE TAMARI & SONS, CO.,
Plaintiff

vs.

BACHE HALSEY STUART INC. (formerly Bache & Co. Incorporated), a Delaware corporation,
Defendants.

No. 77 C 301

COMPLAINT

Abdallah W. Tamari, Ludwig W. Tamari and Farah W. Tamari, doing business as Wahbe Tamari & Sons Co., plaintiffs, by their attorneys, file this action against defendant Bache Halsey Stuart Inc. (formerly Bache & Co. Incorporated) a Delaware corporation, and allege as follows:

1. This is an action to vacate, set aside, and hold null and void an award of the Arbitration Committee, as affirmed by the Appeals Committee, of the Board of Trade of the City of Chicago, pursuant to the provision of 9 U. S. C. § 10.

2. The matter in controversy exceeds the amount of $10,000.00 exclusive of interest and costs. Jurisdiction is conferred on this Court by 28 U. S. C. § 1331(a), 28 U. S. C. § 1332, 28 U. S. C. § 1337 and 28 U. S. C. § 1350.

3. Plaintiffs Abdallah W. Tamari, Ludwig W. Tamari and Farah W. Tamari ("Tamaris") are citizens and legal residents of Lebanon, where, among other things, they do business under the style of Wahbe Tamari & Sons Co.

4. Defendant Bache Halsey Stuart Inc. (formerly Bache & Co. Incorporated) ("Bache Delaware") is a corporation organized under the laws of Delaware, and it does, and has a place of business in Chicago, Illinois.

5. Arbitration proceedings between Tamaris and Bache Delaware before the Arbitration Committee and the Appeals Committee of the Board of Trade of the City of Chicago ("CBOT") were concluded by decision of the Appeals Committee on January 25, 1977.

6. The circumstances under which the arbitration proceeding between Tamaris and Bache Delaware came before the CBOT and the Arbitration and Appeals Committees are described hereinafter.

7. On or about May 20, 1972 and September 22, 1972 Tamaris executed customer agreements with respect to two separate commodity futures trading accounts on Bache Delaware forms which incorporated a pre-dispute arbitration clause which provided as follows:

> "14. This contract shall be governed by the laws of the State of New York, and shall inure to the benefit of your successors and assigns, and shall be binding on the undersigned, his heirs, executors, administrators and assigns. Any controversy arising out of or relating to my account, to transactions with or for me or to this agreement or the breach thereof, shall be settled by arbitration in accordance with the rules then obtaining of either the American Arbitration Association or the Board of Governors of the New York Stock Exchange as I may elect, except that any controversy arising out of or relating to transactions in commodities or contracts relating thereto, whether executed or to be executed within or outside of the United States shall be settled by arbitration in accordance with the rules then

> obtaining of the Exchange (if any) where the transaction took place, if within the United States, and provided such Exchange has arbitration facilities or under the rules of the American Arbitration Association as I may elect. If I do not make such election by registered mail addressed to you at your main office within five days after demand by you that I make such election then you may make such election. Notice preliminary to, in conjunction with, or incident to such arbitration proceeding, may be sent to me by mail and personal service is hereby waived. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof, without notice to me."

(A copy of this customer agreement is attached hereto as Exhibit A.)

8. The execution of the forms referred to in paragraph 7, above, by Tamaris resulted from solicitations of Bache & Co. (Lebanon) S. A. L. ("Bache Lebanon") to have open commodity futures accounts. The circumstances of such solicitations, the opening of the commodity futures accounts, the transactions in commodity futures contracts in such accounts and the dispute that subsequently occurred between Tamaris and Bache Delaware are described in Tamaris' Answer and Counterclaim filed with the CBOT (a copy of which is attached hereto as Exhibit B) and in the complaint filed in this Court captioned *Abdallah W. Tamari, Ludwig W. Tamari and Farah W. Tamari, co-partners doing business as Wahbe Tamari & Sons Co., Plaintiffs,* v. *Bache & Co. (Lebanon) S. A. L., a Lebanese corporation and Bache & Co. Incorporated, a Delaware corporation, Defendants,* Case No. 75 C 4189 (a copy of which is on file in this Court and attached hereto as Exhibit C.)

9. On or about January 9, 1974, Bache Delaware, claiming that Tamaris owed it the sum of $376,366.96 for debit balances in Tamaris two commodity accounts, notified the Tamaris, in writing, that it was invoking the pre-dispute arbitration clause contained in its customer agreements with the Tamaris and

demanded that they elect as the arbitration forum, either the Board of Governors of the New York Stock Exchange or the American Arbitration Association within five days from the date of demand and further notified them that, if they did not, Bache Delaware would select the arbitration forum. (A copy of such notification is attached hereto as Exhibit D.)

10. On or about January 12, 1974, Tamaris notified Bache Delaware according to the pre-dispute arbitration clause that the arbitration forum should be the exchange where the commodity transactions took place, i.e., the CBOT. Tamaris further requested that the arbitration include their claim against Bache Delaware for recovery in the amount of $2,115,000. (A copy of such notification is attached hereto as Exhibit E.)

11. On or about February 1, 1974, Bache Delaware filed its claim, labeled a "Complaint", against Tamaris with the CBOT. (A copy of this "Complaint" is attached hereto as Exhibit F.) Such "Complaint" was filed prior to the time any arbitration submission agreement had been executed by the parties.

12. On or about April 27, 1974, Tamaris executed a submission agreement furnished to them by the CBOT for the arbitration of the dispute between Tamaris and Bache Delaware. (Exhibit G attached hereto.)

13. On or about September 17, 1974, Tamaris filed their "Answer and Counterclaim" to the "Complaint" of Bache Delaware, in which the Tamaris counterclaimed to recover the sum of $2,150,000 which they had previously paid to Bache Delaware for losses suffered in their accounts and also requested that it be adjudicated that the Tamaris did not owe the amount of $376,366.96 claimed by Bache Delaware.

14. Tamaris' counterclaim filed with the CBOT, alleged, among other things, the following violations of law and exchange rules by Bache Delaware:

(a) The churning of Petitioners' accounts in violation of Section 4b of the Commodity Exchange Act, Rule

146 of the CBOT and similar rules of other exchanges;

(b) Violations of Sections 1.33, 1.33a(a)(2), 1.33a(b), of the Regulations promulgated under the Commodity Exchange Act;

(c) Violations of Regulation 1990 of the CBOT, Rules 145 and 146 of the CBOT and similar rules and regulations of other exchanges;

(d) Violations of Rule 210 of the CBOT, paragraphs 8, 12, 14 and 15 of Regulation 1822 of the CBOT and similar rules and regulations of other exchanges relating to margin requirements; and

(e) Other violations of Section 4b of the Commodity Exchange Act and also breaches of fiduciary duty.

15. In the spring of 1975, subsequent to the filing of Tamaris' Answer and Counterclaim with the CBOT, the CBOT questioned, because of the amendments to the Commodity Exchange Act, which became effective on April 21, 1975, whether or not the Arbitration Committee of the CBOT had jurisdiction to entertain arbitration of the dispute between Bache Delaware and Tamaris and then continued the matter generally. As of that time the Arbitration Committee had not met with respect to the dispute between Tamaris and Bache Delaware; nothing was pending before the Committee concerning such matter; and the CBOT had not yet determined whether or not it would hear the matter.

During the summer and early fall of 1975, Tamaris, through their attorney, communicated with attorneys for the CBOT as to the status of the matter. The response was that the CBOT, through its attorneys, was to seek a ruling from the Commodity Futures Trading Commission ("CFTC") as to whether or not the CBOT could exercise jurisdiction over the matter.

17. In July of 1975, the staff of the CFTC issued an interpretive opinion to the effect that the arbitration proceedings

brought by customers pending before the effective date (April 21, 1975) of the amendments to the Commodity Exchange Act, were not abated by said Act. (The opinion is attached hereto as Exhibit H.)

18. It was not until on or about October 16, 1975, that the first meeting was held by the Arbitration Committee of the CBOT respecting the dispute between Tamaris and Bache Delaware. At that meeting, among other things, the question was raised by counsel for Bache Delaware as to whether or not the Arbitration Committee had authority to proceed with the arbitration in view of the interpretive opinion of the staff of the CFTC. At that time, the applicability of such opinion was rejected by the Arbitration Committee, stating that it would proceed only if the parties would execute waivers waiving any objections to the Committee's jurisdiction to proceed in the matter. The Committee, through its counsel, further stated that it would draft a form of waiver to be executed by the parties. The Committee at that meeting, also rejected the applicability of such interpretive opinion to another arbitration matter which had come before the Committee. The Committee, however, did tentatively set the date of December 11, 1975, to proceed with the arbitration between the Petitioners and Bache Delaware, provided that the parties executed the waivers waiving any objections to the Committee's jurisdiction.

19. On or about October 29, 1975, the attorney for the Tamaris received a letter dated October 27, 1975, from house counsel for the CBOT. (A copy of that letter is attached hereto as Exhibit 1.) The letter, in pertinent part, provides as follows:

> "Enclosed is a form which the Arbitration Committee *requires* your client to sign before it will begin hearings on this matter. If the notarization is taken anywhere other than the State of Illinois, the Committee will require a certification of notarial acknowledgement indicating the authority of the notary to so notarize the document." (Emphasis supplied.)

20. On or about October 30, 1975, the Arbitration Committee of the CBOT again met. Among other things, the question was raised by the attorney for Bache Delaware as to whether or not the Arbitration Committee could proceed with the arbitration between Tamaris and Bache Delaware in light of the interpretive opinion of the CFTC. Again, the applicability of such opinion was rejected by the Arbitration Committee as to both the arbitration matter between Tamaris and Bache Delaware and the other arbitration matter referred to above. Again, it was stated that the aforesaid form of waiver was required to be executed by the parties before the Arbitration Committee would proceed in the arbitration but that, if such waivers were executed, hearings would begin on December 11, 1975.

21. In a letter dated and hand-carried to the CBOT on or about December 9, 1975, the Arbitration Committee was advised of Taramis' refusal to execute the waiver required by the CBOT and of Tamaris' intention to seek relief in a court proceeding. (A copy of that letter is attached hereto as Exhibit J.)

22. On or about December 10, 1975, Tamaris filed a complaint against Bache Delaware and Bache Lebanon in this Court. The complaint, seeking recovery of $2,115,000 under the Commodity Exchange Act, 7 U. S. C. § 1 *et seq.*, is identified in paragraph 8, *supra*.

23. On or about December 11, 1975, Tamaris filed a complaint with the Business Conduct Committee of the CBOT against Bache Delaware. (A copy of that complaint is attached hereto as Exhibit K.)

24. On or about December 10, 1975, Tamaris filed a complaint with the CFTC against Bache Delaware. (A copy of that complaint is attached hereto as Exhibit L.)

25. At or about 1:00 P.M. on December 11, 1975, Tamaris' counsel received a letter by messenger from the house counsel for the CBOT which stated, among others things, that

the Arbitration Committee would convene that day at 3:00 P. M. with respect to the matter involving Tamaris and Bache Delaware. House counsel also served in an advisory capacity to the Arbitration Committee. (A copy of such letter is attached hereto as Exhibit M.)

26. On December 11, 1975, at approximately 3:00 P. M., which followed the filing of Tamaris' complaint in this Court on December 10, 1975, the Arbitration Committee met and at that meeting advised Tamaris' counsel for the first time that the execution of the required waiver, referred to in paragraph 18, 19 and 20 above, was no longer required, and, further, that the Committee had decided to proceed immediately with the hearing of the arbitration matter.

27. The Arbitration Committee had never met or heard any evidence concerning the arbitration matter prior to December 11, 1975. By proceeding with the matter, the Arbitration Committee without notice contradicted and contravened its earlier ruling not to proceed with the matter unless and until it received the required waivers. Notwithstanding its earlier insistence upon executed waivers, and Tamaris' reliance thereon, the Arbitration Committee proceeded over Tamaris' objection to receive evidence even though the Tamaris had elected to refuse to sign the required waivers and proceed in this Court for relief under the Commodity Exchange Act, and had so informed the Arbitration Committee prior to their December 11, 1975.

28. The letter of December 11, 1975 to Tamaris' counsel from the house counsel of the CBOT (a copy of which is attached hereto as Exhibit M) refers to a letter of house counsel dated December 5, 1975 concerning another arbitration matter in which Tamaris' counsel was counsel for one of the parties. Referring to the earlier letter dated December 5, 1975, house counsel stated as follows in his letter of December 11, 1975:

> "In that letter I enclosed a copy of CFTC interpretive letter #75-1 which indicates that matters submitted to arbitration prior to April 21, 1975 may be heard without regard to the Section 5a(11) restrictions of the Act. Therefore, as you well know, since the jurisdictional issues in that case are identical to the jurisdictional issues in the Bache-Tamari case, the reasons for your clients to execute the waiver has been obviated."

29. Contrary to house counsel's urging, the jurisdictional issues in the other case are not identical to the jurisdictional issues in the instant case. Secondly, the CFTC interpretive letter (#75-1) had been issued and was known prior to the October meeting's Arbitration Committee, and the Committee had still insisted on executed waiver to jurisdiction. Thirdly, the letter while dated December 5, 1975, it was post-marked Monday, December 8, 1975 and was not received by the office of Tamaris counsel until Wednesday, December 10, 1975.

30. At no time prior to December 10, 1975, had Tamaris' counsel been apprised by anyone associated with the CBOT or with the Arbitration Committee, or by anyone, that the CBOT or the Arbitration Committee had decided to proceed with the other arbitration matter, nor prior to December 11, 1975, had Tamaris' counsel been apprised that the CBOT or the Arbitration Committee had decided to proceed with the arbitration between Tamaris and Bache Delaware, unless Tamaris executed the required waivers.

31. On December 11, 1975 and thereafter, at the direction of the assigned panel of the Arbitration Committee, and over the continuing objections of Tamaris, oral hearings were also held respecting the matter. The additional hearing dates were January 7, 1976, January 14, 1976, January 26, 1976, February 11, 1976, February 12, 1976, March 2, 1976, March 9, 1976, April 7, 1976, April 8, 1976 and May 17, 1976. Hearings were also scheduled for May 18, 1976, May 19, 1976, May 20, 1976, May 26, 1976 and May 27, 1976.

32. The conduct of the CBOT and the assigned panel members of the Arbitration Committee during the hearings listed in paragraph 31 hereof was arbitrary, prejudicial, biased,

unfair and oppressive with respect to the rights of Tamaris, in the following respects, among others:

(a) On or about December 11, 1975, being informed and well knowing that Tamaris had refused to sign the required waiver, waiving objection to their jurisdiction and being informed and well knowing that it was the Tamaris' intention to seek relief against Bache Delaware in a court proceeding (Exhibit J), the Committee panel reversed itself on the matter of requiring the waiver, ignored or disregarded the existence of the intervening federal court case identified in paragraph 8 and ordered that the evidentiary proceedings commence immediately, all to the detriment of Tamaris;

(b) The two-hour notice that the Committee panel gave to Tamaris that it would proceed with the matter on December 11, 1975, was both unreasonable and also unfair to Tamaris in light of the circumstances and representations of the Committee panel that it would not proceed with the arbitration matter unless Tamaris executed the waiver required by the Committee;

(c) The Committee panel misled and deceived the Tamaris in that it had represented to Tamaris that it would not proceed on December 11, 1975 with the arbitration matter unless Tamaris executed a waiver waiving any and all objections to the jurisdiction of the CBOT over the matter;

(d) On or about February 20, 1976, Tamaris learned, for the first time, that it was Bache Delaware that had requested the ruling which had led to the interpretive opinion of the staff of the CFTC (Exhibit H hereof). This was pointed out to the Arbitration Committee at a hearing held on March 2, 1976. In a letter dated

March 8, 1976, (a copy of which is attached hereto as Exhibit U) counsel questioned the propriety of such procedures pointing out that Tamaris had no opportunity to provide any imput with respect to the letter of Bache Delaware which requested a ruling for the Commission. Since the Commission was asked to interpret Section 5a(11) of the Commodity Exchange Act, as amended, it was extremely important to know how the question to the Commission was framed. For example, was the Commission advised that the arbitration was one in which the initiating party was an exchange member and futures commission merchant, or that the arbitration arose out of an argument to arbitrate entered into prior to the time that the dispute arose, or that the arbitration was involuntary. The failure of the Committee panel to advise Tamaris that Bache Delaware had requested a ruling from the Commission's staff so as to afford Tamaris on opportunity to submit input on the question operated to prejudice of Tamaris.

(e) Despite the terms of the submission agreement, applicable rules and regulations of the CBOT and the law, the CBOT and the Arbitration Committee failed to provide Tamaris with a legally constituted panel of members of that Committee to hear the arbitration proceeding. Instead the selection of the Committee panel did not comply with the requirements of the submission agreement, applicable rules and regulations of the CBOT or law. In this connection, see the letter of Tamaris' counsel, dated May 7, 1976, the contentions of which were summarily dismissed by the Committee at a hearing held on May 17, 1976, without giving any grounds for such rejection. (A copy of the letter of May 7, 1976 is attached hereto as Exhibit N); (see also paragraph 35 through 59, below.)

(f) During the course of the Arbitration proceedings there was a continuing and uniform failure on the part of the Committee to rule on motions and objections of Tamaris and when rulings were made, a failure to state grounds for such rulings;

(g) The Committee panel proceeded over Tamaris' objections to entertain the arbitration matter even though the matter presented numerous and complex issues of law and fact and was of a nature and scope which rendered it inappropriate for arbitration;

(h) The Committee panel refused to postpone hearings despite its knowledge that certain material documents necessary to the defense of the Tamaris and the presentation of their claim were located in Lebanon and not accessible to them because of the civil war there;

(i) The Committee panel issued a subpoena duces tecum directing Tamaris to produce certain documents which were located in Lebanon and not in their possession or control and despite the civil war in Lebanon, the Committee panel made unfair and unreasonable demands for their immediate production;

(j) The Committee panel refused to issue subpoenas ordering Bache Delaware to produce documents determinative of the issue of whether or not Tamaris' commodity accounts were properly margined or under margined on the ground that Tamaris were not entitled to assert the claim that Bache Delaware violated CBOT rules and regulations relating to margin requirements;

(k) The Committee panel refused to issue subpoenas requiring certain officers and employees of Bache Delaware to appear and testify on the ground that the Committee desired to hear the testimony of Tamaris as a condition precedent;

(l) The Arbitration Committee refused to disqualify the panel hearing the matter despite the fact that its composition did not meet the requirements of the submission agreement, the rules of the CBOT, or law and thus was illegally constituted and without authority to make a valid award.

(m) The Arbitration Committee refused to disqualify the panel hearing the matter despite the fact that from January, 1976 through April, 1976 one of the members of the panel had been secretly negotiating with the Bache Delaware representative, designated by Bache Delaware to appear on its behalf and to testify, for the purpose of employing him;

(n) The rulings made by the Arbitration Committee from January through April, 1976 are tainted by the participation therein of the panel member who was contemporaneously engaged in mutually beneficial, undisclosed, repeated private discussions with the Bache Delaware representative at the arbitration proceedings;

(o) The legal advisor to the Arbitration Committee, who was house counsel of the CBOT, participated in the making of rulings affecting the interests of the Tamaris in the arbitration proceeding at the same time that he was acting as an advocate for the CBOT, which was an adversary to the Tamaris in the case before this Court which concerned the same subject matter;

(p) The Committee panel scheduled protracted evidentiary hearings (four consecutive days and thereafter to be followed by two consecutive days) and directed Tamaris, over their objections, to give testimony during such hearings despite the fact the Committee had refused to issue subpoenas duces tecum ordering Bache Delaware to produce certain documents which

were material and necessary to the proper presentation of Tamaris' testimony and case;

(q) The Committee panel, directed the order of proof of Tamaris' case;

(r) The Committee panel scheduled hearings and refused to postpone such hearings despite its knowledge that the scheduling of such hearings interfered with the preparation of Tamaris cases in this Court;

(s) Throughout the proceedings the Committee panel, by its own conduct and rulings and by its deference to the wishes of counsel for Bache Delaware and tolerance of his intemperate conduct toward the Tamaris and their counsel, ceased functioning as fair and impartial arbitrators and became activists on behalf of Bache Delaware; (Transcripts of all proceedings are incorporated herein by reference and submitted to this Court under separate cover. Bache Delaware will not be served with copies since their counsel already has copies.)

(t) The Committee panel refused to postpone an evidentiary hearing despite the illness of Tamaris' counsel;

(u) The CBOT and the Arbitration Committee, by refusing, in the Spring of 1975, either to assert jurisdiction over the matter or determine whether or not it would hear the matter, placed Tamaris in a legal uncertainty as to the status of the matter vis-a-vis the CBOT and the Committee, all to the prejudice of Tamaris;

(v) Notwithstanding the protracted delay caused by the refusal of the CBOT and the Arbitration Committee to assert jurisdiction over the matter, the Committee panel then ignored or summarily dismissed the fact that the civil war in Beirut, Lebanon severely crippled Tamaris' ability to proceed. Incredibly, the Committee repeatedly and arbitrarily accused Tamaris of delaying the proceedings;

(w) Despite the fact that Tamaris' counterclaim, filed with the CBOT on September 17, 1974, alleged a number of violations of the Commodity Exchange Act and CBOT rules and regulations, to Tamaris' knowledge the CBOT Business Conduct Committee never undertook any investigation of Bache Delaware;

(x) On or about December 11, 1975, the Arbitration Committee was specifically advised that Tamaris had formally requested the Business Conduct Committee to conduct an investigation of the conduct of Bache Delaware vis-a-vis violations of CBOT Rules. However, the Arbitration Committee failed to acknowledge that the dual conflicting functions of the CBOT as forum and investigator placed it in a position of conflict of interest.

(y) On or about January 7, 1976, the CBOT and the Committee panel were informed that the Tamaris had filed suit in this Court seeking among other things, to enjoin the CBOT and the Committee from conducting further hearings. Despite knowledge of the fact that the suit rendered the CBOT and the Committee adversaries of Tamaris, the Committee and its counsel disregarded the conflict of interests that existed and continued to schedule proceedings and entertain the arbitration matter. The suit is identified as *Abdallah Tamari, et al.* v. *Bache & Co. (Lebanon) S. A. L. et al.*, Number 76 C 21, and is on appeal.

(z) The Arbitration Committee applied and relied upon a CFTC staff opinion, which purportedly directly applied to the subject arbitration matter, when in fact it did not because substantial aspects of the question had not been fairly and completely presented to the CFTC staff for consideration.

(aa) Notwithstanding Rule 183 of the CBOT and Section 7 of the Legislative Act to Incorporate the Board of Trade, Chicago, and notwithstanding Tamaris continuing objections that their presence was involuntary the Committee persisted in conducting proceedings. Moreover, the Committee proceeded when it was under no legal compulsion to do so and thereby granted Bache Delaware the relief Bache Delaware otherwise sought by its Motion To Compel Arbitration filed in the federal court in case number 75 C 4189, described in paragraph 22, above. This act of the Committee panel further manifested its bias and prejudice against Tamaris.

(bb) The Secretary of the CBOT, who, under CBOT Rule 77(c), is responsible for the conduct of proceedings before the Arbitration and Appeals committees, became employed by Bache Delaware during the course of the proceedings.

33. In addition to the above recited instance of error and prejudice, the panel of arbitrators hearing this matter was illegally constituted and without jurisdiction or legal authority to render a valid award. The applicable facts and CBOT Rules follow.

34. On or about April 27, 1974, Tamaris in connection with the controversy involving them and Bache Delaware, executed an arbitration submission agreement furnished to them by the CBOT which provided in part, as follows:

> "[The parties] do hereby mutually agree to submit the said differences and controversies for decision, in accordance with the rules of the Board of Trade of the City of Chicago to a quorum of the present 'Committee of Arbitration' elected by said Board of Trade, or to substitutes for members of said Committee, as the case may be. . . ."

(A copy of the arbitration submission agreement is attached hereto as Exhibit O.)

35. Rule 182 of the CBOT, as applicable here, provides:

> "Five members of [the Committee of Arbitration] shall constitute a quorum."

(A copy of Chapter 6 of the Rules of the CBOT, insofar as they relate to arbitration (Rules 180-199), is attached hereto and incorporated herein as Exhibit P.)

36. On April 27, 1974, the date on which Tamaris executed the arbitration submission agreement, the Arbitration Committee was composed of the following ten persons:

William L. Allen
William J. Griffin, Jr.
Jordan A. Hollander
Neal E. Kottke
James F. Shea
William P. Conrad, Jr.
Martin J. Dempsey, Jr.
Stuart A. Newman
Edward B. Rhea, Jr.
Jerome M. Spielman

Of this number, only Messrs. Conrad, Newman and Rhea were appointed to the panel of arbitrators considering the arbitration matter involving Tamaris and Bache Delaware. No explanation or statement has ever been made or offered by the CBOT as to why none of the other members of the Arbitration Committee at the time of the execution of the arbitration submission agreement were appointed to complete the quorum of five panel members as required by the submission agreement.

37. Instead, William P. Conrad, Jr., Stuart A. Newman, Edward B. Rhea, Jr., Robert B. Armstrong, David Baby, Lawrence M. Corbin, Donn R. Farr and Ralph D. Klopfenstein were members of the Committee panel. The election of these CBOT members to the membership on the Arbitration Committee occurred as follows:

(a) The two year terms of office of Messrs. Allen, Griffin, Hollander, Kottke and Shea on the Committee ex-

pired on or about January 14, 1975, and the terms of three of the panel members—Conrad, Newman and Rhea—as well as those of Messrs. Dempsey and Spielman, expired on about January 20, 1976.

(b) On or about January 20, 1975, the following five CBOT members were elected members of the Arbitration Committee as successors to Messrs. Allen, Griffin, Hollander, Kottke and Shea, whose terms of office had expired on or about January 14, 1975:

Robert B. Armstrong
David Baby
Lawrence M. Corbin
Donn R. Farr
Ralph D. Klopfenstein

These CBOT members were not members of the Arbitration Committee on April 27, 1974, the date on which the Tamaris executed the arbitration submission agreement.

38. Tamaris have no knowledge of who appointed Messrs. Conrad, Newman, Rhea, Armstrong, Baby, Corbin, Farr and Klopfenstein to this panel of arbitrators or why these particular persons were appointed to the panel or why other Committee members were not appointed. Tamaris did not participate in such appointment nor were they consulted. Rather, Tamaris relied upon the CBOT and the Arbitration Committee to follow the terms of the submission agreement and the rules of the CBOT in this regard.

39. It was not until subsequent to April 8, 1976, as a consequence of the events at the hearings on April 7 and 8, 1976, that Tamaris learned when the various panel members had been elected to the Arbitration Committee and that Messrs. Armstrong, Baby, Corbin, Farr and Klopfenstein were not members of the Arbitration Committee on April 27, 1974, the date on which Tamaris executed the arbitration submission agreement.

40. It was the duty of the Arbitration Committee and the panel members to determine that the panel was validly constituted in accordance with the term of the arbitration submission agreement, the rules of the CBOT and applicable law.

41. It was the duty of each member of the Arbitration Committee and panel members to determine whether or not he met the qualifications to serve on the panel as prescribed by the submission agreement and the rules of the CBOT.

42. Each panel member had read the submission agreement and, being a member of the CBOT and the Arbitration Committee, had knowledge of the CBOT rules relating to arbitration matters.

43. The Arbitration Committee members breached the duties alleged in paragraphs 42 and 43 hereof.

44. Rule 198 of the CBOT, in pertinent part, provides as follows:

> "Whenever a panel of the Committee of Arbitration . . . has begun to hear or review evidence and argument in any arbitration proceedings, and the term of a committee member on that panel expires, such member shall continue in office until the arbitration proceeding before his committee has ended if his absence would defeat a quorum of such committee in the proceeding."

45. As alleged in subparagraph 39(a) hereof, the terms of office of Messrs. Conrad, Newman and Rhea on the Arbitration Committee expired on or about January 20, 1976.

46. As alleged in paragraph 37 hereof, Rule 182 of the CBOT provides that five members of the Arbitration Committee shall constitute a quorum.

47. Messrs. Conrad, Newman and Rhea have all participated in meetings of the panel hearing the arbitration matter subsequent to January 20, 1976, the date on which their terms as members of the Arbitration Committee expired. As of and subsequent to January 20, 1976, the presence of all three was

not necessary to constitute a quorum of either the panel or the Arbitration Committee. The continued participation of Messrs. Conrad, Newman and Rhea at hearings after their terms had expired is not authorized under the rules of the CBOT, nor was the continued participation of all three authorized or sanctioned by Rule 198 since all were not required to maintain the quorum of five.

48. During the course of the proceedings, the chairman of the panel, Mr. Newman, stated and continued to state, until on or about April 8, 1976, that all members of the panel were required to be present and participate at each.

49. At a meeting of the panel held on December 11, 1975, during which testimony was taken, Mr. Corbin was not present nor has he attended or participated in any meeting of the panel relating to the arbitration matter subsequent to that date.

50. Tamaris have never waived the attendance of Mr. Corbin at any meeting of the panel relating to this arbitration.

51. Tamaris were never notified that Mr. Corbin had withdrawn from the panel or that he had refused to act on the panel or attend hearings.

52. On or about April 7, 1976, Mr. Klopfenstein was disqualified from the panel and thereafter did not attend any meetings of the panel or participate in any decisions concerning the arbitration matter.

53. There have been other meetings of the panel relating to the arbitration matter at which all members of the panel were not present and whose attendance was not waived by Tamaris.

54. On or about April 7, 1976, and again on or about April 8, 1976, at meetings of the panel, Tamaris notified and advised Messrs. Conrad, Newman, Rhea, Armstrong, Baby and Farr, the only panel members present at such meetings, that the panel was illegally constituted and demanded that the panel disqualify itself from proceeding further, but the panel members disagreed with and rejected the contentions of Tamaris and ordered that the arbitration proceed.

55. On or about May 7, 1976, Tamaris again notified and advised the Arbitration Committee by letter that the panel was not legally constituted and demanded that it disqualify itself. (A copy of the letter is attached hereto as Exhibit N).

56. At a meeting on May 17, 1976, the six panel members named in paragraph 56, above, again disagreed with and rejected the contentions of Tamaris that the panel was illegally constituted and ordered that the arbitration proceeding continue to be heard by the panel.

57. On May 17, 1976, Tamaris refused to proceed further before the panel on the grounds, among others, that the panel was not legally constituted, that the panel was without legal authority or jurisdiction to render a valid award and that any award rendered by it would be void.

58. By reason of the facts hereinabove alleged, the panel was illegally constituted, such panel was without legal authority and jurisdiction to render a valid award and any award made by the panel is void, for the following reasons:

(a) That the controversy, as required by the terms of the arbitration submission agreement, was not submitted for decision to a panel consisting of "a quorum [five members] of the present 'Committee of Arbitration' " (i.e., five persons who were members of the Arbitration Committee on April 27, 1974, the date on which the Petitioners executed the arbitration submission agreement) but, instead, was submitted to a panel consisting of eight persons, only three of whom—Messrs. Conrad, Newman and Rhea—were members of the "present 'Committee of Arbitration' " (i.e., the Committee as constituted on April 27, 1974) and thus eligible to serve on the panel, and five of whom —Messrs. Armstrong, Baby, Corbin, Farr and Klopfenstein—were not members of the Arbitration Committee on April 27, 1974 and thus not eligible to serve on the panel; or

(b) That on January 20, 1976, the terms of office of Messrs. Conrad, Newman and Rhea on the Arbitration Committee having expired and the presence of all of these three persons not being necessary to constitute a quorum of either the panel or the Arbitration Committee, by reason of Rule 198 of the CBOT all of the three persons were not then no longer eligible to continue in office and serve on the panel; or alternatively;

(c) That of the panel members—Messrs. Conrad, Newman, Rhea, Armstrong, Baby, Corbin, Farr and Klopfenstein—who composed the panel, as originally constituted, some were no longer members of the panel, some did not attend each meeting of the panel and some did not participate in all the decisions of the panel.

59. Following Tamaris' refusal to proceed on May 17, 1976, the Committee panel, on June 21, 1976, rendered their award in favor of Bache Delaware. The award ordered Tamaris to pay Bache Delaware the sum of $451,604.16 and costs, and dismissed Tamaris counterclaim against Bache Delaware. (The award is attached hereto as Exhibit Q.)

60. On June 28, 1976, Tamaris appealed the award to the Appeals Committee of the CBOT and as stated in paragraph 5 above the Appeals Committee affirmed the decision of the Arbitration Committee on January 25, 1977. (The decision of the Appeals Committee together with its transmittal letter are attached hereto as Exhibits R and S, respectively.)

61. The decision of the Appeals Committee was rendered without first permitting Tamaris an opportunity to present to the Appeals Committee the issues raised on appeal even though Tamaris requested such an opportunity. (See Exhibits T, U, V, W, X and Y attached hereto.)

62. The decision of the Appeals Committee was rendered without first affording Tamaris a hearing even though a hearing was requested by Tamaris. (See Exhibits T, U, V, W, X & Y).

63. The Appeals Committee was not, nor could it have been, adequately informed of Tamaris' issues on appeal.

64. The absence of issues on appeal rendered the appeal process meaningless and any purported "review" equally meaningless.

65. The refusal and failure to grant a hearing on appeal also rendered the appeal process meaningless and any purported "review" equally meaningless.

66. The failure of the Arbitration Committee to support its award with a statement of reasons, findings of fact and grounds precluded meaningful review by the Appeal Committee.

67. The failure of the Appeal Committee to support its decision with a statement of reasons, findings of fact and grounds operates to prevent this Court from conducting a meaningful review of the reasons, findings and grounds for the Appeals Committee's decision.

68. The failure of the Arbitration Committee to support its decision with a statement of reasons, findings of fact and grounds further operates to prevent a meaningful review of the award and decision.

WHEREFORE, the plaintiffs, Abadallah W. Tamari, Ludwig W. Tamari and Farah W. Tamari, co-partners doing business as Wahbe Tamari and Sons, Co., pray:

(1) That this Court entertain this action;

(2) That this Court enter a judgment pursuant to Title 9, U. S. C. § 10, declaring that the Arbitration Committee and the Appeals Committee of the CBOT were not authorized to enter a valid award or decision against Tamaris for the following reasons: the Arbitration Committee panel was not legally selected as consti-

tuted; the conduct of the CBOT and the Arbitration Committee during the hearings listed in paragraph 31 hereof was contrary to law, arbitrary, prejudicial, biased, unfair and oppressive with respect to the rights of the Tamaris; the Arbitration and Appeals Committees of the CBOT had no jurisdiction to entertain the matter; the award of the Arbitration Committee and the decision of the Appeals Committee each renders meaningful administrative and judicial review impossible; Tamaris were deprived of due process of law under the United States and Illinois constitutions by the refusal of the Appeals Committee to permit the filing of issues on appeal and by failing to provide a hearing in connection therewith;

(3) That the defendant be enjoined from proceeding in this cause, or having this cause adjudicated, in any other forum until such time as the judgment of this Court in this action shall have been entered; and

(4) That the plaintiffs have such other, further and different relief as this court may deem just and proper.

ROBERT P. HOWINGTON, JR.
DONALD C. SHINE
JAMES M. BREEN
135 South LaSalle Street
Chicago, Illinois 60603
(312) 236-7755
Attorneys for Plaintiffs

Of Counsel:
Howington, Elworth & Osswald
135 South LaSalle Street
Chicago, Illinois 60603
(312) 236-7755

APPENDIX B.

Exhibit "D"

June 21, 1976

BOARD OF TRADE OF THE CITY OF CHICAGO

In the Matter of the Arbitration Between BACHE & COMPANY, *Complainant,* *versus* ABDALLAH W. TAMARI, FARAH TAMARI, LUDWIG W. TAMARI, individually and as co-partners doing business as WAHBE TAMARI & SONS, and WAHBE TAMARI & SONS, Company, *Respondents.*	Decision

We, the undersigned, being a majority of the arbitrators selected to hear and determine a matter in controversy between the abovementioned claimant and respondents set forth in a submission to arbitration signed by the parties on February 7, 1974 and April 27, 1974, respectively;

And having heard and considered the proofs of the parties, have decided and determined that in full and final settlement of the above matter, respondents shall pay to claimant the sum of $451,640.16 including interest, plus the sum of $25.00 representing one half of the $50.00 arbitration fee paid by claimant to the Chicago Board of Trade;

And further have decided and determined that the counterclaim of respondents be and hereby is dismissed;

And that claimant and respondents shall each pay to the Chicago Board of Trade the sum of $883.77 representing one half of the stenographic and transcript costs of $1767.55.

/s/ STUART A. NEWMAN
Stuart A. Newman, *Chairman*

/s/ ROBERT B. ARMSTRONG
Robert B. Armstrong

/s/ DAVID P. BABY
David P. Baby

/s/ WILLIAM P. CONRAD, JR.
William P. Conrad, Jr.

/s/ DONN R. FARR
Donn R. Farr

/s/ EDWARD B. RHEA, JR.
Edward B. Rhea, Jr.

This is to certify that the foregoing is a true copy of the Award of the Committee of Arbitration in the case entitled Bache & Company versus Abdallah W. Tamari, Farah Tamari, Ludwig W. Tamari, individually and as co-partners doing business as Wahbe Tamari & Sons, and Wahbe Tamari & Sons, Company.

/s/ MARGARET A. OESTERLE
Margaret A. Oesterle
Assistant Secretary

APPENDIX C.

Exhibit "E"

January 25, 1977

BOARD OF TRADE OF THE CITY OF CHICAGO

In the Matter of the Appeal of the Decision of the Arbitration Committee in the Dispute Between
BACHE & COMPANY,
Complainant,
and
ABDALLAH W. TAMARI, FARAH TAMARI, LUDWIG W. TAMARI, individually and as co-partners doing business as WAHBE TAMARI & SONS, and WAHBE TAMARI & SONS, COMPANY,
Respondents.
} Decision

We, the undersigned, being a majority of the Appeals Committee members considering the appeal of Abdallah W. Tamari, Farah Tamari, Ludwig W. Tamari, individually and as co-partners doing business as Wahbe Tamari & Sons and Wahbe Tamari & Sons Company, from the decision of the Arbitration Committee of the Chicago Board of Trade in the controversy between the above-mentioned parties;

And having reviewed the case upon the record of the testimony and evidence given before the Committee of Arbitration, have determined that the decision of the Arbitration Committee shall be upheld in this matter.

/s/ FRANCIS X. O'DONNELL
Francis X. O'Donnell,
Chairman

/s/ HARVEY J. JAUNICH
Harvey J. Jaunich

/s/ THOMAS C. BROWN
Thomas C. Brown

/s/ MYLES J. KERRIGAN
Myles J. Kerrigan

/s/ JOHN F. GILMORE, JR.
John F. Gilmore, Jr.

/s/ EMMETT A. MCKERR
Emmett A. McKerr

APPENDIX D.

Exhibit "B"

BOARD OF TRADE OF THE CITY OF CHICAGO

In the Matter of the Arbitration Between

BACHE & COMPANY,
Complainant,
vs.

WAHBE TAMARI, ABDALLAH W. TAMARI, FARAH TAMARI, individually and as co-partners doing business as WAHBE TAMARI & SONS, and WAHBE TAMARI & SONS, CO.,
Respondents.

Respondents herein, Abdallah W. Tamari, Farah W. Tamari and Ludwig W. Tamari, individually, and as co-partners doing business as Wahbe Tamari & Sons Co., by their attorney, Robert P. Howington, Jr., answer the "Complaint" filed in this arbitration proceeding, as follows:

ANSWER

1. Respondents, in answer to the allegations of paragraph 1 of the "complaint", admit such allegations except the allegation that Bache & Co. Incorporated operates and maintains an office in Beirut, Lebanon, which allegation the respondents deny. Respondents, in response to such allegation, state that Bache & Co. (Lebanon) S. A. L., an agent of Bache & Co. Incorporated, operates and maintains an office in Beirut, Lebanon, and that such agent is a legal entity to be differentiated from Bache & Co. Incorporated, the "complainant" in these proceedings.

2. Assuming that the term "Bache & Co." as used in paragraph 2 of the "complaint" means "Bache & Co. Incorporated," the respondents admit the allegations of paragraph 2 of the "complaint".

3. Respondents deny the allegations of paragraph 3 of the "complaint" and, in answer thereto, state that the respondents are Abdallah W. Tamari, Farah W. Tamari and Ludwig W. Tamari, that they, as co-partners, are doing business as Wahbe Tamari & Sons Co., that they are residents of Beirut, Lebanon and that their post office addresses are Box 1533, Beirut, Lebanon. Respondents, in further answer, state that they never intended to do business under the style of "Wahbe Tamari & Sons" but inadvertently did so and that Bache & Co. (Lebanon) S. A. L. had knowledge of such facts. Respondents request, further, that the caption of this proceeding be amended to show such true and correct information as stated herein.

4. In answer to paragraph 4 of the "complaint," the respondents Abdallah W. Tamari, Farah W. Tamari and Ludwig W. Tamari admit that they, doing business as Wahbe Tamari & Sons Co., were customers of Bache & Co. Incorporated. They further admit that a dispute has arisen relating to two accounts in which they had an interest. Respondents deny the remaining allegations of paragraph 4 of the "complaint."

5. Respondents assume that the allegations of paragraph 5 of the "complaint" are true, but further state that it was the respondents who first requested that the dispute be arbitrated before the Committee of Arbitration of the Board of Trade of the City of Chicago. (Compare Exhibit E and Exhibit D attached to the "complaint" of Bache & Co. Incorporated.)

6. Assuming that the copies attached to the "complaint" are true copies of the customers' agreements between Bache & Co. Incorporated and respondents, the respondents admit the allegations of paragraph 6 of the "complaint."

7. Assuming that the term "Bache & Co." as used in paragraph 7 of the "complaint" means "Bache & Co. Incorporated",

the respondents admit the allegations of paragraph 7 of the "complaint" and, in further answer thereto, state that they submitted the dispute to arbitration before the Committee of Arbitration of the Board of Trade of the City of Chicago on the condition that the entire claims of both Bache & Co. Incorporated and the respondents would be arbitrated before such Committee.

8. Respondents deny the allegations of paragraph 8 of the "complaint" and, in answer thereto, state that the respondents had interests in two commodity accounts with Bache and Co. Incorporated, a Delaware corporation, the principal offices of which are located in New York City, New York, such accounts being numbered MF 1564 and MF 1602. In further answer, the respondents state that they had the entire interest in Account # MF 1564 but only one-half interest in Account # MF 1602, the other half interest being owned by George Khnouf, which facts were known to Bache & Co. (Lebanon) S. A. L.

9. Respondents deny the allegations of paragraph 9 of the "complaint" and, in answer thereto, state that, although a considerable amount of the commodity trading was done on the Board of Trade of the City of Chicago, trading also occurred on other commodity exchanges including, among others, the Chicago Mercantile Exchange and the London Sugar Exchange. The commodities traded were as follows: sugar, cattle, hogs, pork bellies, soybeans, corn, wheat, cotton, soybean meal, silver, orange juice, coffee, soybean oil and platinum. Respondents admit that Bache & Co. Incorporated has requested the respondents to pay the amounts set forth in paragraph 9 of the "complaint." Respondents, however, have refused to pay such amounts for the reasons set forth in their "Answer" and in their "Defense and Counterclaim."

10. Respondents admit the allegations of paragraph 10 of the "complaint", and further state that they have previously paid to Bache & Co. Incorporated sums totalling $2,150,000.00 for losses suffered in such accounts.

11. Respondents deny the allegations of paragraph 11 of the "complaint" and state that there is due and owing to the respondents from Bache & Co. Incorporated the sum of $2,150,000.00 for the reasons set forth in respondents' "Defense and Counterclaim."

Defense and Counterclaim of Respondents

As a complete defense to the allegations of the "complaint" and as a "counterclaim", respondents state as follows:

12. Bache & Co. Incorporated, acting with and through its agent, Bache & Co. (Lebanon) S. A. L., caused and permitted to be made an excessive number of trades for the two accounts in which the respondents had an interest to the extent that the commissions generated for Bache & Co. Incorporated and Bache (Lebanon) S. A. L. by such trading were excessive, and Bache & Co. Incorporated and Bache & Co. (Lebanon) S. A. L. churned such accounts, all to the detriment and damage of the respondents and in violation of Section 4b of the Commodity Exchange Act and Rule 146 of this Association, as follows:

(a) Solicited the respondents on many occasions for the purpose of having the respondents open a commodities account with Bache & Co. Incorporated, representing to the respondents that Bache & Co. Incorporated and Bache & Co. (Lebanon) S. A. L. were expert in the handling of commodity futures trading and also were expert in analyzing commodity markets and forecasting the trends in such markets;

(b) Approached and solicited associates of the respondents and requested such associates to recommend to the respondents that they open a commodities account with Bache & Co. Incorporated;

(c) By such solicitations and representations, caused the respondents to repose complete trust and confidence in Bache & Co. Incorporated and its agent, Bache &

Co. (Lebanon) S. A. L., and caused the respondents to open one account (MF 1564) with Bache & Co. Incorporated in which account they had the entire interest and, subsequently, to open a second account (MF 1602) with Bache & Co. Incorporated in which account they had a half interest, George Khnouf owning the other half interest, which facts were known to Bache & Co. (Lebanon) S. A. L.;

(d) By such solicitations and representations, caused the respondents to repose complete confidence and trust in Bache & Co. Incorporated and Bache & Co. (Lebanon) S. A. L. as to their expertise in handling commodity accounts and as to their expertise as commodity analysts;

(e) Recommended to the respondents purported advantages of vesting trading authority over the commodity accounts in individuals other than the respondents, and relying upon such advice, the respondents vested control over such accounts in individuals other than the respondents, which was arranged by Bache & Co. (Lebanon) S. A. L., and which individuals were inexperienced in commodity futures trading and which facts were known to Bache & Co. (Lebanon) S. A. L.;

(f) Requested that the respondents execute a "hedging letter", thereby permitting trading on lower margins, despite the fact that the agents and employees of Bache & Co. (Lebanon) S. A. L. knew that such trading was not for hedging purposes;

(g) Assigned three commodity account executives to the two commodity accounts and thus facilitated the volume of trading in such accounts;

(h) Telephoned or visited the respondents, or their employees and agents, many times a day advising and recommending that the accounts trade in certain and various commodity futures contracts and caused such

accounts to be so traded, all with the knowledge that the respondents and their employees and agents, while knowledgeable in coffee and sugar, were inexperienced in the business of trading in commodity futures, particularly with reference to trading on American exchanges;

(i) Caused or permitted such accounts to be traded when such accounts were in a severely undermargined or deficit position;

(j) Caused or permitted trading in numbers of contracts in excess of written restrictions imposed by the respondents;

(k) Failed to supervise properly the commodity account executives handling such accounts;

(l) Caused and permitted such accounts to trade in approximately 2800 contracts during a period of approximately 13 months, which trading generated commissions of approximately $118,000.00;

and as a consequence of such acts and omissions violated similar rules of other exchanges where transactions were executed for such accounts.

13. Bache & Co. Incorporated, in its capacity as a futures commission merchant, to the detriment and damage of the respondents and in violation of the Commodity Exchange Act:

(a) Failed to furnish in writing directly to the respondents as of the close of the last business day of each calendar month, or as of any other regular monthly date selected, a statement which clearly showed the open contracts with prices at which they were acquired and the ledger balance carried for each of the accounts in which the respondents had an interest, all as required by Section 1.33 of the regulations promulgated under the Commodity Exchange Act;

(b) With respect to each account, failed to furnish in writing directly to the respondents a monthly statement, or an accompanying supplemental statement, showing the net profit or loss on all contracts closed since the date of the previous statement and the net unrealized profit or loss in all open contracts figured to the market, all as required by paragraph (a)(2) of Section 1.33a of the regulations promulgated under the Commodity Exchange Act;

(c) With respect to each account, failed to furnish directly to each co-partner respondent a copy of the monthly statement required by Section 1.33 above, clearly showing on such statement, or on an accompanying supplemental statement, the further information specified in paragraph (a)(2) of Section 1.33a, all as required by paragraph (b) of Section 1.33a of the regulations promulgated under the Commodity Exchange Act; and

(d) By reason of the omissions alleged in subparagraphs (a), (b) and (c) hereof, concealed from the respondents and deceived them as to the true status and condition of such accounts and facilitated the churning of such accounts, all in violation of Section 4b of the Commodity Exchange Act.

14. Bache & Co. Incorporated, by accepting and carrying the accounts in which the respondents had an interest and over which individuals other than the respondents exercised trading authority or control, violated Regulation 1990 of this Association and engaged in conduct inconsistent with just and equitable principles of trade under Rules 145 and 146 of this Association, all to the detriment and damage of respondents, as follows:

(a) By failing to obtain a copy of the letter referred to in subparagraph b of paragraph 2 of Regulation 1990;

(b) By failing to send directly to the respondents a monthly statement showing the exact position of each account, including all open trades figured to the market, as required by subparagraph e of paragraph 2 of Regulation 1990;

(c) By accepting, carrying or initiating trades in such accounts, when the net equity in such accounts in Board of Trade commodities was less than $5,000.00, thus violating paragraph 5 of Regulation 1990;

and engaged in similar practices with respect to such accounts concerning commodity transactions executed on other exchanges, thus violating the rules and regulations of those exchanges.

15. Bache & Co. Incorporated, to the detriment and damage of the respondents, violated certain other rules and regulations of this Association, as follows:

(a) Violated Rule 210 of this Association by carrying the accounts in which the respondents had an interest without proper and adequate margin;

(b) Violated paragraph 8 of Regulation 1822 by requesting through its agent, Bache & Co. (Lebanon) S.A.L., that the respondents execute a "hedging letter", and then carrying the accounts in which the respondents had an interest on hedging margins, when Bache & Co. (Lebanon) S.A.L. knew that the trading in such accounts was not for hedging purposes;

(c) Violated paragraph 12 of Regulation 1822, when acting through or with its agent, Bache & Co. (Lebanon) S.A.L., encouraged, advised, and recommended to and caused the respondents, or their agents, to make new trades, and then accepted the orders for such new trades, at a time when the accounts in which the respondents had an interest were not properly margined;

(d) Violated paragraph 14 of Regulation 1822, by failing to close the accounts in which the respondents had an interest when such accounts were in a continuing deficit or undermargined position;

(e) Violated paragraph 15 of Regulation 1822 by permitting or causing the accounts in which the respondents had an interest to trade when the net position resulting from such trading was not properly margined as required by Rule 210 and Regulations 1822 and 1822-A;

and engaged in similar practices with respect to such accounts concerning commodity transactions executed on other exchanges, thus violating the rules and regulations of those exchanges.

16. During the time respondents were trading through Bache & Co. Incorporated, they reposed complete trust and confidence in Bache & Co. Incorporated and its agent, Bache & Co. (Lebanon) S.A.L. and relied on the representations and assurances of Bache & Co. Incorporated and its agent. Because of such broker-customer relationship, Bache & Co. Incorporated and its agent owed a fiduciary duty to the respondents. Despite such fiduciary relationship, Bache & Co. Incorporated, acting with or through its agent, Bache & Co. (Lebanon) S.A.L., breached such fiduciary duty to the respondents, engaged in conduct inconsistent with just and equitable principles of trade and violated Section 4b of the Commodity Exchange Act, in the following particulars, knowing at all times of the inexperience of the respondents in the trading of commodity futures contracts:

(a) Arranged for individuals other than the respondents to control the accounts in which the respondents had an interest, with the knowledge that such individuals were not experienced in the trading of commodity futures contracts;

(b) Failed to keep the respondents properly advised as to the true status of such accounts;

(c) Failed to apprise the respondents of the attendant risks which were inherent in trading such accounts;

(d) Encouraged, advised, recommended to and caused the respondents to take short positions, and continue such positions, in a "bull market";

(e) Encouraged, advised, recommended to and caused the respondents to add to and "double up" their short positions as losses mounted resulting from such short positions;

(f) Failed to advise the respondents of the existence of "daily trading limits" on the various exchanges and explain the potential risks created by such "daily trading limits" when a market "locked up";

(g) Made false statements and gave false assurances to the respondents respecting the condition of the commodity markets;

(h) Failed to liquidate positions when instructed to do so by the respondents;

(i) Encouraged, advised, recommended to and caused respondents not to liquidate positions which respondents had requested be liquidated;

(j) Continued to carry the accounts in which the respondents had an interest when respondents had requested that such accounts be closed and when such accounts were in a severely undermargined or deficit position;

(k) Continued to carry such accounts during a period of civil disturbances in Lebanon, when the accounts were in a severe deficit positions, when a curfew existed and communication was difficult, and after the respondents had requested that such accounts be closed;

(l) Was negligent in executing orders for such accounts;

(m) On limit-up days, filled orders of customers received subsequent to the orders of respondents and did not fill the orders of the respondents;

(n) Represented to the respondents that on "limit days" orders of the respondents could be "married" with orders of Bache customers from other Bache offices without going through the trading pits, and further represented to the respondents that orders could be so filled by "special handling" of the respondents' orders;

(o) Failed to explain to respondents the use of "open orders" or "good till cancelled orders" and failed to employ such kinds of orders despite respondents' instructions to liquidate positions;

(p) Encouraged, advised and permitted trading in excess of restrictions imposed by the respondents as to the number of contracts which could be traded;

(q) Failed to explain the nature and characteristics of the commodities which were traded in such accounts (e.g., the respondents were of the opinion that pork bellies were hides);

(r) Misrepresented the expertise of the commodity account executives and agents as to their capabilities in handling commodity accounts;

(s) Misrepresented the expertise of account executives and agents, who were handling the accounts, as to their capabilities as market analysts;

(t) Failed to supervise properly the account executives and agents handling such accounts;

(u) With respect to account # MF 1602, failed to indicate in its records that George Khnouf had a half interest in such account, which Bache & Co. (Lebanon) S.A.L. had knoweldge of, and, further, failed to request of George Khnouf any payment with respect to the losses suffered in such account or the debit balance in such account, when it was through George Khnouf that Bache & Co. (Lebanon) S.A.L.

had approached the respondents and solicited such account, said individual being the same person whom Bache & Co. (Lebanon) S.A.L. had arranged to have control over such account.

17. By virtue of the common law and Section 2(a) of the Commodity Exchange Act, Bache & Co., Incorporated is responsible for the acts of its employees and agents, including Bache & Co. (Lebanon) S.A.L.

18. By reason of the facts hereinabove alleged, Bache & Co. Incorporated, acting with and through its agent, Bache & Co. (Lebanon) S.A.L., excessively traded the commodity accounts in which the respondents had an interest and churned such accounts, made, or caused to be made, false reports and statements to the respondents, concealed from the respondents and deceived them as to the true status and condition of such accounts, all in violation of Section 4b of the Commodity Exchange Act and in violation of the regulations promulgated under such Act; engaged in conduct inconsistent with just and equitable principles of trade by violating the applicable rules and regulations of the respective exchanges on which the trades for such accounts were executed, all to the serious detriment and damage of respondents and in violation of the Commodity Exchange Act; and further breached the fiduciary duty owing to the respondents, thereby damaging respondents to the extent of the sum of $2,150,000.00, which sum respondents, without knowledge of all the material facts hereinabove alleged, paid to Bache & Co. Incorporated, and further damaging respondents to the extent of the sum of $376,366.96, which sum Bache & Co. Incorporated now claims to be owing by the respondents to it, both of which sums were caused to be lost by reason of the acts and omissions of Bache & Co. Incorporated and its agent, Bache & Co. (Lebanon) S.A.L. as hereinabove alleged.

WHEREFORE, the respondents pray:

(a) That the respondents recover from Bache & Co. Incorporated the sum of $2,150,000.00; and

(b) That it be adjudged that Bache & Co. Incorporated is not entitled to recover from the respondents the sum of $376,366.96 or any part thereof.

ROBERT P. HOWINGTON, JR.,
69 West Washington Street
Chicago, Illinois 60602
630-4200
Attorney for the Respondents

Of Counsel:
POPE, BALLARD, SHEPARD & FOWLE
69 West Washington Street
Chicago, Illinois 60602
630-4200